C.f. 2001

(1)

IN THE HIGH COURT OF CHHATTISGARH, JUDICATURE AT BILASPUR (C.G.)

Writ Petition No. 6361 /2005

Petitioners :

1. Ashwani Kumar Sharma, Son of Shri Ram Khilawan Sharma, Age 42 years, Assistant Teacher, Posted at Govt. Primary School, Khairbanakala, Block Bodla, Education District Kawardha (Chhattisgarh).

2. Bhole Prasad Vishwakarma, Son of Late Shri Durga Prasad Vishwakarma, Age 50 years, Assistant Teacher, Middle School Maharajpur, Block Bodla, District Kawardha (Kabirdham), Chhattisgarh.

Versus

Respondents :

1. State of Chhattisgarh, through Secretary, School Education Department, Mantralaya, D.K.S. Bhawan, Raipur, Chhattisgarh.

2. Director, Public Instructions, Pension Bada, Raipur, Chhattisgarh.

3. District Education Officer, District Kawardha (Kabirdham), Chhattisgarh.

4. Principal, Govt. Higher Secondary School, Khairbanakala, District Kawardha (Kabirdham), Chhattisgarh.

WRIT PETITION UNDER ARTICLE 226 OF CONSTITUTION OF INDIA

(29)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.5052 OF 2004

Petitioners : V.C. Salomon and others

versus

Respondents : The State of Chhattisgarh and others

WRIT PETITION NO.1539 OF 2006

Petitioners : Chandrakumar Singh Rajput and another

versus

Respondents : State of Chhattisgarh and others

WRIT PETITION NO.1540 OF 2006

Petitioners : Jaisingh Rathore and another

versus

Respondents : State of Chhattisgarh and others

WRIT PETITION NO.6361 OF 2005

Petitioners : Ashwani Kumar Sharma and another

versus

Respondents : State of Chhattisgarh and others

WRIT PETITION NO.6439 OF 2006

Petitioners : V.K. Rai and others

versus

Respondents : State of Chhattisgarh and others

WRIT PETITION NO.2110 OF 2006

Petitioners : Ramashankar Yadav and another

versus

Respondents : State of Chhattisgarh and others

WRIT PETITION NO.2111 OF 2006

Petitioners : Smt. Amita Tripathi and others

versus

Respondents : State of Chhattisgarh and others

WRIT PETITION NO.2224 OF 2006

Petitioners : Jagendra Singh Rathore and another

versus

Respondents : State of Chhattisgarh and others

WRIT PETITION NO.58 OF 2006

Petitioner : Shrimati Rajkumari (Deshmukh) now Dilliwar

versus

Respondents : The State Government of Chhattisgarh and another

3 (31)

Present : Mr. Anurag Shrivastava, Mrs. Hamida Siddique, Mr. Anupam Dubey, Mr. Ajay Shrivastava and Mr. Bhaskar Payashi, counsel for the petitioner(s).
Mr. Arun Sao, Government Advocate for the State/ respondents.

ORDER
(Passed on 10th of November, 2006)

The petitioners are working as Lecturer/Head Master/Upper Division Teacher/Assistant Teacher in Government Schools/School Education Department. In the course of their service as Lecturer/Head Master/Upper Division Teacher/Assistant Teacher, the petitioners have obtained B.Ed./B.T.I. Certificates at their own expenses before 1-3-1999.

2. The present batch of writ petitions are being disposed of by this common order as the facts and question of law involved in these petitions are common.

3. According to learned counsel for the petitioners, the petitioners are entitled to two advance increments in view of the decision of this Court in the case of *Yashwant Kumar Bharadwaj vs. Municipal Corporation, Durg and another*[1], wherein it has been held that the Teachers, having obtained B.Ed., M.Ed., B.T.I. Certificates, at their own expenses, are covered by the circular dated 24-12-1998 issued by the State Government of Madhya Pradesh.

4. Further, in the matter of *Smt. Manorama Shrivastava vs. State of M.P. and others*[2], the Madhya Pradesh Administrative Tribunal, Gwalior Bench, while considering the circular dated 1-3-1999, wherein it

is provided that the Assistant Teachers, who have acquired B.Ed. Degree at their own cost between 23-10-1964 and 7-5-1973 shall be entitled to two advance increments, relied on decision in the case of *Rakesh Kumar Shrivastava vs. State of M.P. and others* passed in Original Application No.1632 of 1999, decided on 12-10-1999, wherein it is observed that the circular dated 1-3-1999 cannot be made applicable retrospectively. Thus, a Teacher, may be Assistant Teacher, who has obtained B.Ed. Degree before 1-3-1999 is entitled to two advance increments.

5. It is pointed out by learned counsel appearing for the petitioners that the then State of Madhya Pradesh had filed a Special Leave Petition against the orders passed by the Tribunal and the Hon'ble Supreme Court dismissed Special Leave Petition No.1999 of 2000 filed against the order of the Tribunal. Therefore, the direction to the effect that the circular dated 1-3-1999 cannot be made applicable retrospectively, passed by the Tribunal, becomes final and the same shall be applicable to all the Assistant Teachers, who have obtained B.Ed./B.T.I. Certificates before 1-3-1999. It is further substantiated by a circular dated 17-10-2003 issued by the present State of Madhya Pradesh, wherein the circular clearly states about the decision of the Hon'ble Supreme Court.

6. Learned counsel appearing for the petitioners further submits that the facts and question of law involved in the present cases are squarely covered by the decision of this Court in the case of *Yashwant Kumar Bharadwaj* (Supra), to which learned counsel

(33)

appearing for the State/respondents fairly concedes and agrees with the averments made by learned counsel appearing for the petitioners.

7. In some of the cases, on the basis of obtaining B.Ed./B.T.I. Certificates, the petitioners were granted two advance increments, but, later on, the payment of two advance increments was stopped. Since the petitioners are entitled to two advance increments, the order stopping the payment of two advance increments as well as recovery of the said amount is bad and the petitioners are entitled to the benefit of two advance increments from the date they have passed B.Ed./B.T.I. Examinations.

8. Accordingly, the writ petitions are allowed in terms of the decision of this Court in the matter of *Yashwant Kumar Bharadwaj* (Supra), subject to verification of the fact as to whether the petitioners have acquired B.Ed./B.T.I. Certificates at their own expenses as per the circulars dated 24-12-1998 and 1-3-1999 and further whether they have been paid two advance increments or not. No order as to costs.

9. A copy of this order be placed on the record of the connected writ petitions.

Sd/-
Satish K. Agnihotri
Judge

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1 2008 (II) MPJR-CG 96
2 2000 (1) M.P.L.S.R. 136

Gopal